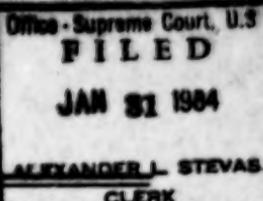


No. 83-870



---

**In the Supreme Court of the United States**

**OCTOBER TERM, 1983**

---

**STATE OF CONNECTICUT, ET AL., APPELLANTS**

v.

**UNITED STATES OF AMERICA, ET AL.**

---

**ON APPEAL FROM THE  
UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT**

---

**MOTION TO AFFIRM**

---

**REX E. LEE**  
*Solicitor General*

**RICHARD K. WILLARD**  
*Acting Assistant Attorney General*

**WILLIAM KANTER**  
*Attorney*

*Department of Justice  
Washington, D.C. 20530  
(202) 633-2217*

---

---

### **QUESTIONS PRESENTED**

1. Whether Section 411 of the Surface Transportation Assistance Act of 1982, 96 Stat. 2159, which authorizes certain tandem trailers to use the federally-funded interstate highway systems, preempts subsequently-enacted laws of the State of Connecticut that prohibit or severely restrict operation of such trailers on those highways in the State.
2. Whether the preemption of state law effected by Section 411 of the Surface Transportation Assistance Act of 1982 violates the Tenth Amendment.

## TABLE OF CONTENTS

|                         | Page |
|-------------------------|------|
| Opinions below .....    | 1    |
| Jurisdiction .....      | 1    |
| Statutes involved ..... | 2    |
| Statement .....         | 2    |
| Argument .....          | 5    |
| Conclusion .....        | 12   |

## TABLE OF AUTHORITIES

### Cases:

|  |            |
|--|------------|
| <i>FERC v. Mississippi</i> , 456 U.S. 742 .....                                      | 8          |
| <i>Hodel v. Virginia Surface Mining &amp; Reclamation Ass'n</i> , 452 U.S. 264 ..... | 5, 6, 7, 8 |
| <i>Kassel v. Consolidated Freightways Corp.</i> ,<br>450 U.S. 662 .....              | 2, 7       |
| <i>Raymond Motor Transportation, Inc. v. Rice</i> ,<br>434 U.S. 429 .....            | 2          |
| <i>Silkwood v. Kerr-McGee Corp.</i> , No. 81-2159<br>(Jan. 11, 1984) .....           | 11         |
| <i>South Carolina State Highway Dep't v. Barnwell Brothers</i> , 303 U.S. 177 .....  | 5          |

### Constitution and statutes:

|   |       |
|---|-------|
| U.S. Const. :                           |       |
| Art. I, § 8 (Commerce Clause) .....     | 8, 11 |
| Art. VI, Cl. 2 (Supremacy Clause) ..... | 5     |
| Amend. X .....                          | 6, 7  |

## Constitution and statutes—Continued:

|                                       |                         |
|---------------------------------------|-------------------------|
| Federal-Aid Highway Act of 1956,      |                         |
| 23 U.S.C. 101 <i>et seq.</i> .....    | 2                       |
| 23 U.S.C. 103(b) .....                | 2                       |
| 23 U.S.C. 103(e)(1) .....             | 2                       |
| 23 U.S.C. (1976 ed.) 127 .....        | 2                       |
| Surface Transportation Assistance Act |                         |
| of 1982, Pub. L. No. 97-424, 96 Stat. |                         |
| 2097 <i>et seq.</i> :                 |                         |
| § 411, 96 Stat. 2159-2160, to be      |                         |
| codified at 49 U.S.C.                 |                         |
| 2311 .....                            | 2, 3, 4, 6, 7, 8, 9, 10 |
| § 411(a), 96 Stat. 2159, to be        |                         |
| codified at 49 U.S.C. 2311(a) .....   | 3                       |
| § 411(b), 96 Stat. 2159, to be        |                         |
| codified at 49 U.S.C. 2311(b) .....   | 3, 10                   |
| § 411(c), 96 Stat. 2159-2160, to be   |                         |
| codified at 49 U.S.C. 2311(c) .....   | 3, 8, 9, 10             |
| § 411(e), 96 Stat. 2160, to be        |                         |
| codified at 49 U.S.C. 2311(e) .....   | 3, 9                    |
| Conn. Pub. Act No. 83-21 .....        | 2                       |
| § 2 .....                             | 3, 4, 8, 9              |
| § 3 .....                             | 8, 9, 11                |
| § 3(1) .....                          | 3, 4, 9, 10, 11         |
| § 3(2) .....                          | 3, 10, 11               |
| § 3(4) .....                          | 4, 10, 11               |

In the Supreme Court of the United States

OCTOBER TERM, 1983

---

No. 83-870

STATE OF CONNECTICUT, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL.

---

*ON APPEAL FROM THE  
UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT*

---

**MOTION TO AFFIRM**

---

Pursuant to Rule 16.1 of the Rules of this Court, the Solicitor General, on behalf of the appellees, moves that the judgment of the court of appeals be affirmed.

**OPINIONS BELOW**

The judgment order of the court of appeals (J.S. App. 2a-3a) is not reported. The opinion of the district court (J.S. App. 7a-27a) is reported at 566 F. Supp. 571.

**JURISDICTION**

The judgment of the court of appeals was entered on September 1, 1983. A notice of appeal (J.S. App. 28a-29a) was filed on September 26, 1983. The jurisdictional statement was filed on November 25, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(2).

### STATUTES INVOLVED

Perinent portions of Section 411 of the Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2159-2160, to be codified at 49 U.S.C. 2311, are reproduced at J.S. App. 37a-38a. Conn. Pub. Act No. 83-21 is reproduced at J.S. App. 30a-36a.

### STATEMENT

1. The Federal-Aid Highway Act of 1956, 23 U.S.C. 101 *et seq.*, authorizes the establishment of a national system of highways. Under this Act, the United States provides states with stipulated percentages of the cost of construction of highways within the various Federal-Aid Highway Systems, including the "Interstate System" and the "Federal-Aid Primary System."<sup>1</sup> Prior to 1983, federal law imposed no limitations on the length of trucks traveling on federally assisted highways; moreover, certain federal weight and width limitations applied only to vehicles traveling on the Interstate Highway System. See 23 U.S.C. (1976 ed.) 127. No federal size standards were imposed on vehicles traveling on the other Federal-Aid Highway Systems. Accordingly, to the extent consistent with the constraints of the Commerce Clause, the states were free to regulate the size of vehicles traveling on those highways.<sup>2</sup>

---

<sup>1</sup>The United States pays 90% of the cost of construction of highways in the "Interstate System," which consists of highways located so as to connect the nation's major cities and industrial centers by routes that are as direct as possible. 23 U.S.C. 103(e)(1). The federal share of the cost of construction of highways in the "Federal-Aid Primary System," which "consist[s] of an adequate system of connected main highways, selected or designated by each State through its State highway department, subject to the approval of the Secretary [of Transportation]" (23 U.S.C. 103(b)), is 75%. Two other Federal-Aid Highway Systems established pursuant to the Highway Act — the Secondary and Urban Systems — are not relevant to this litigation.

<sup>2</sup>See, e.g., *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662 (1981) (invalidating Iowa statute); *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429 (1978) (invalidating Wisconsin regulation).

In Section 411 of the Surface Transportation Assistance Act of 1982 (STAA), 96 Stat. 2159-2160, to be codified at 49 U.S.C. 2311, Congress restricted the scope of state regulation of vehicle size on portions of the Federal-Aid Interstate and Primary Highway Systems. Section 411(a) proscribes enactment or enforcement of any state law imposing a length limitation of less than 48 feet on the trailer portion of a truck tractor-semitrailer combination or less than 28 feet on either trailer portion of a truck tractor-tandem trailer combination. Section 411(b) makes clear that state length limitations permitted under Section 411(a) must relate exclusively to the cargo-carrying portion of the tractor-trailer combination and proscribes state laws directed at the length of overall combinations. Section 411(c) bars state prohibitions on tandem trailers. The proscriptions of Section 411(a) and (c) apply to all elements of the Interstate Highway System and to those portions of the Federal-Aid Primary System determined by the Secretary of Transportation to be "capable of safely accommodating the vehicle lengths" that would be allowed under their terms. STAA Section 411(e), to be codified at 49 U.S.C. 2311(e).

In response to the enactment of the STAA, the State of Connecticut adopted Conn. Pub. Act No. 83-21. Section 2 of that statute flatly prohibits operation of tandem trailers on any highway in Connecticut. Section 3 of the state statute, which, by its terms, goes into effect only in the event that a court enjoins the State from enforcing Section 2, imposes various less sweeping restrictions on operation of tandem trailers in Connecticut. Under Section 3(1) tandem trailers may be operated only on the Interstate System and on those Primary System highways designated by state highway officials.<sup>3</sup> Section 3(2) of the state statute permits

---

<sup>3</sup>The statute also authorizes operation of tandem trailers on short stretches of other highways, designated by state highway officials, linking the major routes otherwise designated with truck stops and freight terminals.

operation of tandem trailers (and most other truck-trailer combinations) longer than 60 feet on Connecticut highways only if a special permit "specifying the conditions under which they may be \* \* \* operated" is secured from the State. Finally, yet another permit, "specifying the period, route and any other conditions for which [a tandem trailer] may be operated," is required by Section 3(4) of Conn. Pub. Act No. 83-21.

2. On April 29, 1983, Connecticut police enforced Section 2 of Conn. Pub. Act No. 83-21, issuing a summons to a driver operating a tandem truck on Interstate Highway 95 within its boundaries and escorting the driver and vehicle out of the State (C.A. App. 18-25).<sup>4</sup> Federal officials advised Governor O'Neill that the state statute was inconsistent with Section 411 of the STAA. On May 27, 1983, after Connecticut officials had indicated to federal officials that they intended to continue to enforce the state statute, the United States commenced this action in the United States District Court for the District of Connecticut, seeking preliminary and permanent injunctive relief prohibiting appellants from enforcing portions of the state statute inconsistent with the STAA. After conducting an evidentiary hearing sought by appellants, the district court entered a preliminary injunction (J.S. App. 4a-6a) restraining them from enforcing the State's ban on tandem trailers (Section 2), the requirement that highways to be used by tandem trailers be approved by *state* officials (Section 3(1)), and the special permit requirements of Section 3(2) and (4), as to those highways covered by the preemptive provisions of Section 411 of the STAA. The district court held that the

---

<sup>4</sup>"C.A. App." denotes the Joint Appendix filed in the court of appeals.

challenged provisions of state law were inconsistent with, and preempted by, the STAA (J.S. App. 15a).<sup>5</sup>

The court of appeals affirmed "substantially for the reasons set forth" in the district court's opinion (J.S. App. 3a).

#### ARGUMENT

The decision of the courts below is clearly correct. No question warranting plenary consideration is presented.

1. The Court has long recognized that motor vehicle size and weight are matters on which Congress may legislate under the Commerce Clause. In *South Carolina State Highway Dep't v. Barnwell Brothers*, 303 U.S. 177, 189-190 (1938), in upholding state weight and width restrictions upon trucks against the claim that they unduly burdened interstate commerce and accordingly ran afoul of the Commerce Clause, the Court emphasized that

Congress, in the exercise of its plenary power to regulate interstate commerce, may determine whether the burdens imposed on it by state regulation, otherwise permissible, are too great, and may, by legislation designed to secure uniformity or in other respects to protect the national interest in commerce, curtail to some extent the state's regulatory power.

Such Commerce Clause legislation is permissible so long as "Congress acted rationally in adopting a particular regulatory scheme." *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 276 (1981). State laws that are inconsistent with such valid federal enactments are void under the Supremacy Clause of the Constitution, Art. VI, Cl. 2.

---

<sup>5</sup>Although the district court has thus far granted only a preliminary injunction, its opinion reflects that the legal issues in this case have been "determined in favor of the United States" (J.S. App. 26a).

Appellants' contention (J.S. 6-11) that Section 411 of the STAA violates the Tenth Amendment by preempting state laws governing tandem trailers is frivolous. In *Virginia Surface Mining & Reclamation Ass'n*, the Court summarized its Tenth Amendment jurisprudence (452 U.S. at 287-288 (footnote omitted; emphasis in original)):

[I]n order to succeed, a claim that congressional commerce power legislation is invalid under the reasoning of *National League of Cities* [v. *Usery*, 426 U.S. 833 (1976).] must satisfy *each* of three requirements. First, there must be a showing that the challenged statute regulates the "States as States." *Id.*, at 854. Second, the federal regulation must address matters that are indisputably "attributes of state sovereignty." *Id.*, at 845. And third, it must be apparent that the States' compliance with the federal law would directly impair their ability "to structure integral operations in areas of traditional governmental functions." *Id.*, at 852.

Appellants plainly cannot satisfy these requirements, for Section 411 of the STAA in no way affects the State's ability to "structure integral operations"; indeed, appellants do not assert that it does.<sup>6</sup> And even if the foregoing requirements

---

<sup>6</sup>Appellants complain (J.S. 9) that the district court was concerned only with the third part of the Tenth Amendment rule stated in *Virginia Surface Mining & Reclamation Ass'n*. Because that case makes clear that appellants had the burden of establishing *each* of the three requirements it outlines, the district court's failure to discuss each of the three requirements is wholly unremarkable. In any event, we note that, contrary to the contention of appellants (J.S. 8) and the amici curiae (Br. of Council of State Gov'ts 10-11), Section 411 does not in any meaningful sense regulate "States as States." Although Section 411 is in form directed to the states, declaring that "no State shall prohibit \* \* \*," its object is obviously the regulation of private commercial practices. The form of expression chosen by Congress simply makes explicit the preemptive effect of the federal determination that tandem trailers below a certain size shall be lawful. Recognizing that their argument elevates form over substance, the amici curiae proceed to

were met, appellants' Tenth Amendment challenge would still fail, because "[t]here are situations in which the nature of the federal interest advanced may be such that it justifies state submission." *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 288 n.29. Given that interstate trucking over Federal-Aid highways is the lifeblood of the nation's commerce, and the substantial burdens imposed on commerce by nonuniform regulation of truck size, see *Kassel v. Consolidated Freightways Corp.*, 450 U.S. at 674-675 (opinion of Powell, J.), this is plainly such a situation.

Appellants complain instead that Section 411 of the STAA, by banning state interference with operation of double trailers, "significantly interferes with Connecticut's ability to formulate and implement policy in the vital area of highway safety" (J.S. 9). But this argument proves too much, because every state statute presumably reflects formulation and implementation of policy judgments. This Court, however, has repeatedly rejected the contention that the Tenth Amendment precludes federal preemption of state regulation of private commerce. Thus, in *Virginia Surface Mining & Reclamation Ass'n*, the Court observed (452 U.S. at 291) that "National League of Cities explicitly reaffirmed the teaching of earlier cases that Congress may, in regulating private activities pursuant to the commerce power, 'pre-empt express state-law determinations contrary to the result which has commended itself to the collective wisdom of Congress . . . .' 426 U.S., at 840," adding that

---

suggest (Br. 11) that our argument "shows that the constitutional plan can readily be subverted if Tenth Amendment protection depends on whether a federal law regulates states *qua* states." But in *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 287, the Court recently affirmed, without dissent, that the "constitutional plan" requires no different rule. No reason for reconsideration of that conclusion is presented.

"there are no Tenth Amendment concerns in such situations" (452 U.S. at 291 n.31). See also *FERC v. Mississippi*, 456 U.S. 742, 759 (1982).<sup>7</sup>

2. Appellants contend (J.S. 11-24), alternatively, that the provisions of Section 3 of Conn. Pub. Act No. 83-21, the enforcement of which was enjoined by the district court (see page 4, *supra*), do not conflict with, and accordingly are not preempted by, Section 411 of the STAA.<sup>8</sup> There is no merit to this contention.

As the district court observed (J.S. App. 15a n.7), Section 3 — designed to spring into use if Section 2 were found to be invalid<sup>9</sup> — contains a "scheme of burdensome regulation that could only have the effect of achieving by an accumulation of petty irritations what § 2 of the Connecticut statute seeks to achieve through outright prohibition." Contrary to appellants' contention (J.S. 13), the enjoined provisions of state law are in clear conflict with Section 411, and accordingly are unenforceable.<sup>10</sup>

---

<sup>7</sup>Appellants also claim (J.S. 10) that Section 411 will indirectly impose certain costs upon the State or its citizens. Even if these financial burdens turned out to be genuine, it is settled that such effects do not establish a Tenth Amendment shield against preemptive federal legislation. *FERC v. Mississippi*, 456 U.S. at 770 n.33; *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. at 292 n.33. It is equally clear that no authority supports the peculiar assertion of the amici (Br. of Council of State Gov'ts 6-8) that Congress must demonstrate the necessity of its actions when it exercises its Commerce Clause authority in a way that preempts state law.

<sup>8</sup>Appellants do not question the determination of the courts below that the flat prohibition on tandem trailers contained in Section 2 of Conn. Pub. Act No. 83-21 is irreconcilable with Section 411(c) of the STAA.

<sup>9</sup>State legislators enacted Pub. Act No. 83-21 well aware that it was inconsistent with federal law, and that its provisions, especially Section 2, were unlikely to survive judicial scrutiny (see J.S. App. 10a-11a n.3).

<sup>10</sup>Appellants argue (J.S. 13, 19) that the district court's decision rests, improperly, not upon the provisions actually enjoined, but upon its perception that the state legislature's motivation for adopting the

Section 3(1) of Pub. Act No. 83-21 allows operation of tandem trailers only on those Federal-Aid Primary System highways designated by state officials, even though Section 411(c) of the STAA bans state prohibition of tandem trailers on *any* Primary System highway designated by the proper federal officials pursuant to Section 411(e). The conflict is self-evident. Appellants suggest (J.S. 16) that the substitution, in the state law, of Connecticut's own Commissioner of Transportation for the federal Secretary of Transportation, designated by Section 411 as the official empowered to decide which Primary System highways should be open to tandem trailers, is somehow a purely ministerial change intended to identify a "state liaison official to coordinate State compliance with federal requirements." But this imaginative reconstruction of the state statute cannot disguise the fact that Section 3(1), on its face, vests the Commissioner of Transportation with substantive authority to determine which Primary System highways are suitable for tandem trailers and to override any inconsistent determination by the Secretary of Transportation. Moreover, appellants overlook the fact that the operation of the

---

statute was wrong. On the contrary, the district court properly relied upon both the language and legislative history of Section 3 that makes clear that the enjoined provisions have the purpose and effect of precluding the use of tandem trailers explicitly authorized by federal law. See J.S. App. 11a n.4, 15a-16a n.7.

Nor is there any merit to appellants' claim (J.S. 19) that the district court failed separately to determine the validity of each challenged provision of Conn. Pub. Act No. 83-21. The validity of the challenged subsections of Section 3 was determined separately from that of Section 2. And although the district court intimated (J.S. App. 15a-16a n.7) that Section 3 might be invalidated as a whole, it noted that because the federal government had carefully tailored its request for injunctive relief, the court would not consider any broader judgment. The actual injunction issued was limited to Section 2 and specified provisions of particular subsections of Section 3 as applied in specifically identified circumstances (see J.S. App. 6a; see page 4, *supra*). As explained in the text, this injunction is clearly required by settled principles of preemption.

district court's injunction is confined to "those Primary System highways designated by the Federal Highway Administration pursuant to § 411(e) of the [STAA] of 1982" (J.S. App. 6a). Thus, to the extent the State applies its prohibition in the manner appellants have suggested, to confine tandems to the Interstate System and to federally designated Primary System highways, the district court's injunction presents no impediment to its enforcement.

The permit requirements of Section 3(2) and (4) enjoined by the district court are also preempted by Section 411. Section 3(2) bars operation of tandem trucks (and most other trucks) over 60 feet in overall length on Connecticut highways unless a special permit has been obtained from the State's Commissioner of Transportation after payment of a fee. This provision directly conflicts with STAA Section 411(b), which provides that any state truck length limitations or regulatory scheme applicable to the Interstate Highway System or designated portions of the Primary System must be framed in terms of the size of the trailer portion of the vehicle, and which bans overall length regulation. Section 3(2), like Section 3(4), which imposes yet another special permit requirement upon all tandem trailers, also conflicts with Section 411(c) of the STAA, which bars state prohibitions upon tandem trailers.

As with Section 3(1), appellants seek to adduce innocent applications of these requirements, suggesting (J.S. 16-19) that they are merely intended to ensure that truckers are notified of the requirements under which they may lawfully operate. And appellants seem to imply (without stating) that these requirements would be limited to those permissible under federal law. But neither Section 3(2) nor Section 3(4) is framed in such narrow terms. The nature of the conditions of operation that may be attached to permits under Section 3(2) is not limited. And Section 3(4) permits

must specify the period of the license, permissible routes, and any conditions established by the Commissioner of Transportation under regulations (issued under Section 3(1)) governing, *inter alia*, "permissible routes [and] hours of operation." Plainly, the scope of the restrictions contemplated by Section 3(2) and (4) is not limited in the fashion appellants suggest.<sup>11</sup> Especially in light of legislative history indicating the State's intention to bar tandem trailers if at all possible (see J.S. App. 10a-11a nn.3 & 4), the district court properly determined that the State's permit requirements impermissibly interfered with the policy established by Congress.

The enjoined provisions of state law thus encroach upon a field Congress has legitimately occupied under the Commerce Clause, directly conflict with provisions of federal law, and stand as an obstacle to the accomplishment of the full purposes and objectives of Congress reflected in Section 411 of the STAA. They accordingly are preempted under each of the alternative tests recognized by this Court. See *Silkwood v. Kerr-McGee Corp.*, No. 81-2159 (Jan. 11, 1984), slip op. 8-9.<sup>12</sup>

---

<sup>11</sup>The provision of Section 3(1) for promulgation of state regulations governing permissible routes renders implausible any suggestion that permit conditions are intended only to give notice and facilitate enforcement of the federal designations of permissible routes for tandem trailers.

<sup>12</sup>Contrary to appellants' apparent contention (J.S. 24-25), the district court did not hold Section 3 of Conn. Pub. Act No. 83-21 invalid on the ground that it unduly burdened interstate commerce and accordingly conflicted with the Commerce Clause itself. There was no need for the courts below to consider that issue. We note, however, that this Court's precedents suggest that the provisions of Conn. Pub. Act No. 83-21 imposed an impermissible burden on commerce (see page 2 note 2, *supra*).

**CONCLUSION**

The judgment of the court of appeals should be affirmed.  
Respectfully submitted.

**REX E. LEE**  
*Solicitor General*

**RICHARD K. WILLARD**  
*Acting Assistant Attorney General*

**WILLIAM KANTER**  
*Attorney*

JANUARY 1984